

LA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL ZALESKI,

Defendant.

2011 FEB 25 P 2:46

JON A. SANFILIPPO
CLERK

Case No. 09-CR-118

DEFENDANT'S MOTION TO ADJOURN TRIAL

The Defendant, Paul Zaleski, by his attorney, Thomas J. Erickson, hereby moves the court for an order adjourning the trial of the above-captioned matter which is currently scheduled on March 21, 2011. As grounds therefore, it is stated as follows:

Mr. Zaleski is currently both physically and mentally unable to participate in a jury trial for a variety of serious health reasons. First, is his dire physical condition. Mr. Zaleski is suffering from chronic severe hip pain due to osteoarthritis. It is the opinion of Dr. Helen Petroff that Mr. Zaleski is unable to travel from his home in Ojai, California, to Wisconsin by either air or car presently because he "is in too much pain and discomfort." (See Petroff letter, Attachment A). Dr. Petroff has referred Mr. Zaleski for hip surgery to alleviate the pain within the next three to six months, with a three to six month recovery time "at best."

Secondly, and perhaps more compelling, is Mr. Zaleski's inability to concentrate because of the number of medications he is taking and because of the severity of the pain. Dr. Petroff has prescribed various heavy pain medications including Percocet which Mr. Zaleski takes daily. He also takes several psychotropic medications as prescribed by his

treating psychiatrist Dr. Ronald Pollack for bipolar disorder. (See Pollack letter, Attachment B) According to Dr. Petroff, "The combination of pain medications, psychotropic medications and his underlying psychiatric condition affect Mr. Zaleski's ability to focus and concentrate. **It is my professional opinion that he would have a very hard time participating in a trial.**" (emphasis added). Dr. Pollack states, "I continue to recommend, from a psychiatric point of view, that Mr. Zaleski's trial be postponed to give him adequate time to have surgery to alleviate his arthritic problems. Until this happens, **I do not believe that Mr. Zaleski will be able to concentrate and focus well enough to be able to participate in a trial or pretrial process.**" (emphasis added).

Mr. Zaleski has had two recent trips to the emergency room because of falling and because of the intense pain. His most recent incident was a fall on February 8, 2011. He was prescribed morphine and it was noted that his degenerative arthritis has spread to lower lumbar spine (see Emergency Room records, Attachments C and D). According to un-filed medical records, Mr. Zaleski also visited the emergency room on November 13, 2010, and was prescribed morphine then, as well.

Aside from the physical and mental impediments to Mr. Zaleski participating in a trial presently, his health problems have prevented him from assisting counsel in preparing for trial. For at least the last several months, Mr. Zaleski has been unable to meaningfully and lucidly confer with counsel regarding trial preparation on anything more than a sporadic basis. To date, there are well over 30,000 pages of discovery to review. Mr. Zaleski's defense would likely require him to testify and preparations in that

regard simply have not been possible. We are in no position to proceed to trial at this time and will not be until Mr. Zaleski's health improves.

Reasonably, it is hoped that once Mr. Zaleski' undergoes hip surgery, his pain will alleviate and his necessary but heavy dosage of pain medications, including opiates, will no longer be necessary which will allow him to prepare for and then participate meaningfully in a trial, as well as to travel to Milwaukee. In regard to when that may be, Dr. Petroff states that she "does not expect any significant change in Mr. Zaleski's condition for at least a year."

Wherefore, for the reasons stated, Mr. Zaleski asks that the trial be adjourned, or that Mr. Zaleski's trial be severed from the other defendants who presumably could proceed to trial as scheduled.

Dated this 25th day of February, 2011.

Respectfully submitted,

/s/ _____
Thomas J. Erickson
Attorney for Defendant

Address and Phone:
611 N. Broadway, Ste. 200
Milwaukee, WI 53202
(414) 271-0678

VALLEY OAK FAMILY PRACTICE MEDICAL GROUP, Inc.

Douglas K. Nelson, D.O.
Rochelle L. Wilson, D.O.
Maria L. Halvorson, D.O.
Helen Petroff, M.D.

1202 Maricopa Hwy., Ste. C
Ojai, CA 93023
Telephone: (805) 640-0068
Fax: (805) 640-1749

February 16, 2011

Hon. Lynn Adelman
US Courthouse
517 E. Wisconsin Avenue
Milwaukee, WI 53202

Re: Mr. Paul Zaleski

Dear Judge Adelman:

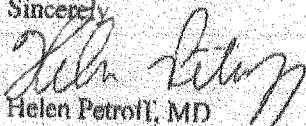
This letter is written on behalf of my patient, Mr. Paul Zaleski. Mr. Zaleski suffers from severe hip pain due to osteoarthritis. This condition is chronic requiring Mr. Zaleski to be treated with muscle relaxants and pain medications. I have referred him for consideration of surgery. It is my professional opinion that Mr. Zaleski cannot travel to Wisconsin by air or car at this time. He is simply in too much pain and discomfort.

In addition to the Percocet and Soma that I am prescribing for his pain, he is being prescribed Lithium by his psychiatrist for his underlying psychiatric condition. The combination of pain medications, psychotropic medications and his underlying psychiatric condition affect Mr. Zaleski's ability to focus and concentrate. It is my professional opinion that he would have a very difficult time participating in a trial.

Mr. Zaleski is considering possible hip surgery within the next 3 to 6 months. This type of surgery has a 3 to 6 month recovery time at best. However, the results are unpredictable. Within 3 to 6 months from the date of surgery, Mr. Zaleski should know if there is going to be an improvement in his pain.

I do not expect any significant change in Mr. Zaleski's condition for at least a year. I would be happy to reassess him at that time.

Sincerely,


Helen Petroff, MD

HP/db

Ronald D. Pollock, M.D., Inc.
Diplomatic American Board of Psychiatry
3585 Maple Street, #205
Fremont, CA 94538

(805) 676-1500

February 15, 2011

To Whom It May Concern:

RE: **ZALESKI, PAUL**

DOB: [REDACTED]

RE: **MR. ZALESKI'S INABILITY TO PARTICIPATE IN PRETRIAL PREPARATION**

Dear Sir,

I continue to treat Mr. Paul Zaleski for problems with bipolar disorder.

His difficulties with significant pain from arthritis have not changed since my last letter of December 13, 2010. He continues to struggle with concentration and his ability to focus. He continues to require significant pain medication to alleviate his arthritic distress. He reports to me that his medical care is being provided by Dr. Helen Petroff and that he is receiving Percocet and Soma for his discomfort.

Mr. Zaleski is participating in his psychiatric care with me as prescribed. He is taking his medications Depakote, Zoloft and Klonopin without problem.

I continue to recommend, from a psychiatric point of view, that Mr. Zaleski's trial be postponed to give him an adequate time to hopefully have surgery to alleviate his arthritic problems. Until that happens, I do not believe that Mr. Zaleski will be able to concentrate and focus well enough to be able to participate in a trial or pretrial process.

Sincerely,



Ronald D. Pollock, M.D.

RDP:jhk

DATE: 02/08/11 @ 2025 USER: GCIANSON		CMHS ADM *LIVE* LIST PATIENT'S ACTIVE PRESCRIPTIONS		PAGE 1
PATIENT	ZALESKI, PAUL J	M/62	UNIT NUMBER	
PROVIDER: CLAWSON, GORDON M MD				
REPORTED MED	LOCATION		ISSUED	
Divalproex Sodium Depakote 500 Mg Tablet.ec	OJAI EMERGENCY DEPT			
500 MG ORAL TWICE A DAY				
AceLaminophen/Oxycodone Hydr Percocet 325 Mg-5 Mg 1 tab 1ab	OJAI EMERGENCY DEPT			
1 TAB ORAL THREE TIMES A DAY				
Carisoprodol Soma 250 Mg Tab	OJAI EMERGENCY DEPT			
250 MG ORAL THREE TIMES A DAY				
Sertraline Hydrochloride Zoloft 100 Mg Tab	OJAI EMERGENCY DEPT			
100 MG ORAL TWICE A DAY				
Troliamine Salicylate Aspercreme 10% Crs	OJAI EMERGENCY DEPT			
Clonazepam Klonopin 2 Mg Tab	OJAI EMERGENCY DEPT			
2 MG ORAL EVERY OTHER DAY				
PROVIDER: CLAWSON, GORDON M MD				
MED	LOCATION		ISSUED	
* MORPHINE SULFATE	OJAI EMERGENCY DEPT		02/08/11	
* PROMETHAZINE HYDROCHLORIDE	OJAI EMERGENCY DEPT		02/08/11	



Ojai Valley Community Hospital

Community Memorial Health System

Patient: **PAUL J ZALESKI**
Exam Date: **2/08/2011 19:06**
Patient Tel: **[REDACTED]**
MRN: **J00831703**
Account: **V006040668**

DOB: **[REDACTED]** Age/Gender: **62 M**
Location: **OV.ED**
Physician: **GORDON M. CLAWSON M.D.**
CARL A. GROSS M.D.

PROCEDURE: LEFT HIP - TWO VIEWS

COMPARISON: 11/13/10.

INDICATIONS: Patient fell.

FINDINGS: AP and lateral coned down views of the left hip were obtained, as well as an AP view of the pelvis.

There is no evidence of fracture, subluxation or destructive bone lesions. Degenerative arthrosis is present with narrowing of the superior joint space and reactive sclerosis involving the femoral head and acetabular roof. There is spurring of the acetabulum. Degenerative arthrosis is also present within the visualized lower lumbar spine.

IMPRESSION:

1. No acute bony abnormality is identified.
2. Degenerative arthrosis of the left hip and visualized lower lumbar spine.

Dictated by: **Steven Berrett, M.D. on 2/09/2011 at 8:13**
Transcribed by: **BEAN on 1/09/2011 at 8:32**
Approved by: **Steven Berrett, M.D. on 2/09/2011 at 11:24**